



Unit D, Lunesdale, Upton Magna Business Park, Upton Magna, Shrewsbury, SY4 4TT

Supporting Statement

Certificate of Lawfulness of Proposed Use or Development under Section 192 of the Town and Country Planning Act 1990, for the use of land for the stationing of 2 mobile homes for residential purposes at land to the South of Chear Fen Boat Club Twentypence Road Cottenham Cambridgeshire.

March 2022

Green Planning Studios Ltd
Unit D Lunesdale
Upton Magna Business Park
Shrewsbury
SY4 4TT
Tel: 01743 709364
Email: admin@gpsltd.co.uk

GPS Ref: 21_1161A
Applicant: Drew Price and James Ball

CONTENTS

1. INTRODUCTION	3
2. SITE AND SURROUNDINGS.....	4
3. CERTIFICATE JUSTIFICATION AND GROUNDS.....	5
4. CONCLUSION.....	13
5. APPENDICES LIST	14

1. INTRODUCTION

- 1.1. Green Planning Studio Ltd have been instructed by Drew Price and James Ball to submit an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) in order to confirm that planning permission is not required for the use of the land for the siting of two residential mobile homes.
- 1.2. The site subject of this application is situated at land to the South of Chear Fen Boat Club Twentypence Road Cottenham Cambridgeshire.
- 1.3. This Supporting Statement has therefore been produced to accompany the application for a CLOPUD in order to attain a legal determination from the Local Planning Authority (South Cambridgeshire District Council) that planning permission is not required for the land to be used for the use as set out in the application.
- 1.4. The land identified by a red line on the site Location Plan accompanying this application indicates the extent of the site subject to this CLOPUD (ref: 21_1161A_001).

2. SITE AND SURROUNDINGS

- 2.1. The application site is the area within the red line on the associated site Location Plan (ref: 21_1161A_001). This being land in the ownership of the applicants.

The application site is located approximately 4km north-east of Cottenham. The River Great Ouse forms the northern boundary of the site and the B1049 the eastern boundary. The western and southern boundaries are defined by established mature hedgerows / trees. The site is served by an existing dedicated access road.

- 2.2. The relevant planning history of this site from records held by South Cambridgeshire District Council can be viewed in the table below.

Reference	Notes	Decision Date	Decision
	HEREBY WITHDRAW the Enforcement Notice issued on the 21st June 2021 relating to The Land To The South Of Chear Fen Boat Club Twentypence Road Cottenham	24 th Nov 2021	Council Withdraw Enforcement Notice
APP/W0530/C/21/3279609	Appeal against Enforcement Notice dated 21 st June 2021	23 rd July 2021	Appeal
S/1346/16/LD	Enforcement Notice - Without planning permission, the material change of use of land to a caravan site for residential use involving the siting of two sectional caravans and three touring caravans and the unauthorised development of concrete bases.	21 st June 2021	Enforcement Notice
S/1346/16/LD	Certificate of lawful development for the standing of a mobile home	11th Oct 2016	Granted

3. CERTIFICATE JUSTIFICATION AND GROUNDS

3.1. Green Planning Studio Ltd have been instructed to submit an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) in order to confirm that, on the area outlined in red on the site Location Plan accompanying this application, planning permission is not required for the use of the land for the siting of two residential mobile homes on land to the South of Chear Fen Boat Club Twentypence Road Cottenham Cambridgeshire.

3.2. Section 192(4) of the Town and Country Planning Act 1990 states that;

'The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operation are begun, in any of the matters relevant to determining such lawfulness.'

What can the land be used for?

3.3. Lawful Development Certificate reference S/1346/16/LD dated the 11th October 2016 (**Appendix A**) confirms the lawfulness of the existing use of land for the siting of a residential mobile home. The Location Plan identifying the extent of the land covered by this permission is also included in **Appendix A**.

3.4. The land identified by the Council on the OS plan by a thick black line only covered where the mobile home was understood to be sited.

3.5. The submitted application had rightly identified the site with a red line around **the whole site** which is the same as that shown on the Location Plan (Ref; 21_1161A 001) for this application. However, the Council incorrectly amended this as described above.

3.6. It is clear that the planning unit is the whole site as identified on the Location Plan (Ref; 21_1161A 001). The site is well defined by obvious boundaries and there is a single access point. From a physical and ownership perspective it is clear that the whole site is the planning unit.

- 3.7. It is noted that that Enforcement Noticed dated 21st June 2021 (Ref: S/1346/16/LD) served by the Council but subsequently withdrawn identifies the whole site. This suggests that the whole site is viewed as the planning unit.
- 3.8. The identification of planning units was set out in the judgment of **Burdle v Secretary of State for the Environment and another [1972] 3 All ER 240** where Bridge JJ set out the following categories:
- 1) “Whenever it is possible to recognise a single main purpose of the occupier’s use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered”
 - 2) “It may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.
 - 3) “It may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit”

In accordance with the first test of Burdle, due to the occupier’s ownership and uses within the application site, the whole unit of occupation must be considered.

What is being proposed in this application?

- 3.9. This CLOPUD application proposes the use of the land for the siting of two residential mobile homes within the planning unit defined by Location Plan (Ref: 21_1161A_001). The justification and grounds on which the use of the land for two residential mobile homes would be lawful is based on relevant planning case law, as set out in the paragraphs below.

Relevant Case Law

- 3.10. Green Planning Studio asserts that a Lawful Development Certificate should be granted for the siting of two residential mobile homes within the red line area of the application site and planning unit as identified on the Location Plan (Ref: 21_1061A 001), as an increase in the number of caravans would not constitute 'development'.
- 3.11. In order for the proposal to constitute 'development' in this case there must be a 'material change of use'.
- 3.12. Green Planning Studio Ltd accepts that the proposal for an additional caravan is intensification of the use of land. However, as case law shows, the intensification of the number of caravans on the site is unlikely to constitute a material change of use.
- 3.13. The main issue therefore is whether the increase in the number of caravans on the site would constitute a 'material change of use' by way of intensification.
- 3.14. The Town and Country Planning Act 1990 controls development of land and imposes a requirement to obtain planning permission for the development of land. Development is defined in section 55, which provides, in so far as is material;

"... 'development', means the carrying out of ... any material change in the use of any buildings or other land...."

- 3.11 In **Hertfordshire County Council v SSCLG and Metal and Waste Recycling Limited [2012] EWHC 277(Admin) (1st February 2012) ('MWRL')** (see **Appendix B**) Ouseley J addressed the issue of a material change of use by intensification. The judgement of Ouseley J was upheld by the Court of Appeal in **Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited [2012] EWCA Civ 1473**.
- 3.12 MWRL involved a scrapyard which more than doubled its throughput. The County Council served enforcement notices alleging a material change of use by way of intensification. On appeal to the Secretary of State the County Council were found to be wrong and the appeals against the enforcement notices upheld. The County Council appealed that decision and that appeal was dismissed by Ouseley J in February 2012. This case is now of considerable significance when considering the issue of intensification.

- 3.13 In considering whether a doubling in size necessarily amounted to a material change of use Ouseley J stated;

“35.The concept of a material change of use by intensification requires, as a necessary but not sufficient condition, an increase in the scale of all or some of the activities on-site, leaving aside how or where that has to manifest itself. It is that increase which has to cause the change of use. To the extent that effects are relevant, it is the effect from that increase which matter. A change in the nature of activities on the site, or a change in the relative proportions of mixed uses on the site may give rise to some material change of use other than by way of intensification. But if such changes themselves do not bring about a material change of use as was the case here, the activities as varied can be carried on as part of the existing or permitted use. Their effects are permitted effects.

*36. Similarly, in judging whether an increase in activity has led to an intensification of such a nature or degree as is necessary to constitute a material change of use, the level at which that activity did or could occur without giving rise to a change of use has to be ascertained. It is only what happens above that no doubt not very clearly defined baseline which can contribute to the material change of use. In so far **as the change in effect is relied on, the change in effect must exceed that which could be caused by the permitted use.** [GPS emphasis]*

*43. I add these words of caution about attempting to broaden material change of use by intensification as a substitute for proper conditions on planning permissions. Although authorities, in the Court of Appeal for example in **Fidler v the First Secretary of State [2004] EWCA Civ 1295** at paragraph 28, and earlier in, for example, **Lilo Blum v the Secretary of State for the Environment [1987] JPL 278** per Simon Brown J, treat the principle of a material change of use by intensification as well established, the fact remains that no decided case has been shown to me in which a material change of use by intensification has been found to have occurred.*

*44. In **Brooks and Burton Limited v the Secretary of State for the Environment [1977] 1 WLR 1294**, Megaw LJ pointed out on page 1306E-J that experienced planning counsel had found no reported case in which an intensification in existing use had been found to be a material change of use. That remained the position in front of me. Although earlier cases, mentioned in the authorities cited above say that*

the existence of a material change in use by intensification is well recognised, they do no more themselves than recognise that material change of use by intensification may exist. They have never actually found one.

45. This reflects what Sullivan J said in **R v Thanet District Council v Kent International Airport Plc [2001] P&CR 2** at paragraph 54:

"It is easy to state the principle that intensification may be of such a degree or on such a scale as to make a material change in the character of a use, it is far more difficult to apply it in practice. There are very few cases of 'mere intensification'. Usually the increase in activity will have led to some other change: from hobby to business, from part to full-time employment, or an increase in one use at the expense of other uses in a previously mixed use."

- 3.14 In essence, Ouseley J is finding that "more of the same" cannot in itself amount to a material change of use, even if it results in a major environmental impact. There has to be a change in the character of use itself, in other words a material change in the definable character of the land. Changing from one scrapyard to a large scrapyard of the same nature but double the size did not amount to a material change of use;
- 3.15 The Court of Appeal at paragraphs 9 to 11 sets out the current position with regards "intensification" and material change of use;

*"9 It is not disputed that intensification of a use is capable of constituting an MCU. That was accepted in **Guildford Rural District Council v Fortescue [1959] QBD 112**, Lord Evershed at page 124, in **Lilo Blum v Secretary of State and Anr [1987] JPL 278**, by Simon Brown J, and in **R v Thanet District Council [2001] 81 P & CR 37** by Sullivan J. What is necessary, however, and accepted by the parties to the present appeal, is that the test for deciding whether there has been an MCU is whether there has been a change in the character of the use. In **East Barnet Urban District Council v British Transport Commission [1962] 2 QB 484 at 491**, Lord Parker CJ stated:*

"It seems clear to me that under both Acts [Town and Country Planning Acts, 1932 and 1947] what is really to be considered is the character of the use of the land, not the particular purpose of a particular occupier."

10 In *Lilo Blum*, Simon Brown J stated, at page 280:

*“It was well recognised law that the issue whether or not there had been a material change in use fell to be considered by reference to the character of the use of the land. It was equally well recognised that intensification was capable of being of such a nature and degree as itself to affect the definable character of the land and its use and thus give rise to a material change of use. **Mere intensification, if it fell short of changing the character of the use, would not constitute material change of use.**” [GPS emphasis]*

In *Thanet District Council*, Sullivan J stated, at paragraph 54:

“The question left open might well be a vexed question, for the reasons advanced by the respondents. It is easy to state the principle that intensification may be of such a degree or on such a scale as to make a material change in the character of a use; it is far more difficult to apply it in practice. There are very few cases of ‘mere intensification’. Usually the increase in activity will have led to some other change: from hobby to business, from part to full-time employment, or an increase in one use at the expense of other uses in a previously mixed use.” [GPS emphasis]

11 The general test applied by the Inspector, at paragraph 68, is, in my view, in accordance with authority:

“In the light of judicial pronouncements, and after considering the approaches of the parties, it seems to me that what must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in such a change in the definable character of the use that it amounts to a material change of use. It is necessary to first look at the effects of what has been done at the site.”

- 3.16 The issue of a material change of use by intensification is addressed in the *Encyclopaedia of Planning Law and Practice* (Sweet & Maxwell) at P55.53 which states;

“....There may be a material change in use where an existing use has become intensified.....but mere intensification of a use does not in itself constitute a material change....it must be intensification of such a degree as to amount to a material

change in the character of the use....a caravan site is still a caravan site whether three or 300 caravans are accommodated. Whilst an increase in numbers need not in itself constitute development, it will do so if the increase is of a scale sufficient to constitute a material change in the character of the use....”

- 3.17 The Court of Appeal considered the issue of a material change of use of land in the context of the number of caravans in the case of **Reed v Secretary of State for Communities and Local Government and Bracknell Forest District Council** [2014] EWCA Civ 241; [2014] JPL 725 (see **Appendix C**). In that case the Inspector found that a doubling of the number of caravans on the land amounted to a material change in use, but failed to identify any material change in the definable character of the land. Sullivan LJ stated at paragraph 21 and 27;

*“21 If the inspector did consider whether there had been a change in the character of the mixed use on the site, then it would seem that the sole basis on which he concluded that there had been a material change of use was the simple fact that the additional caravan amounted to a "doubling of the number of caravans". **A caravan site with four caravans rather than two caravans upon it still has the character of a caravan site**, [GPS emphasis] that is the very reason for the imposition of conditions relating to the numbers of caravans such as were imposed on the 2007 permission granted on appeal. Thus, the only express reasoning in the decision is consistent with the inspector having adopted an erroneous approach: that "mere intensification" could amount to a material change of use.*

27. Mr Greateorex sought to persuade as that, unlike the kind of permission that might have applied in the scrap yard case, where there is a general permission for a type of use, the permission given on appeal in the present case was a very narrow one. He submitted that the permission had to be read as a whole and that included the conditions which meant that the permission was not simply a permission for a caravan site for a gypsy family, but it was a caravan site very tightly hedged about in terms of who could occupy the caravans, the number of caravans, their position on the site and so on and so forth. It seems to me that that submission confuses matters which might well have been relevant if the alleged breach of planning control had been a breach of condition, with the breach of planning control that was actually alleged in the notice as corrected by the inspector: a material change of use. The inspector was simply concerned with whether there had been a material change in the character of the mixed equestrian and caravan site use.”

- 3.18 Sullivan LJ observed that a caravan site with four caravans rather than two still has the character of a caravan site. He also observed at paragraph 45 that the nature of the permitted use and any impact of an increase in that use should in essence be carried out by reference to what is controlled by condition not the description of the permission.
- 3.19 The case law decisions referred to above were considered by a Planning Inspector in a similar situation to that subject of this application. This being in relation to an appeal concerning an enforcement notice where one of the breaches of planning control as alleged in the notice was the material change of use of the land by the stationing of an additional mobile home on the land. Paragraphs 32 to 42 of the Appeal Decision outlines the Inspector's thinking in relation to the issue of a material change of use and they concluded that there has been no material change of use in this case. The Appeal Decision is included in this Statement as **Appendix D**.
- 3.20 In considering the extent to which the number of caravans on the land could be increased without there being a material change in use it is necessary to determine the current definable character of the land and the impact, if any on that definable character of any change in the number of caravans.
- 3.21 Currently, a residential mobile home is permitted to be sited on the land identified by a thick black line on the OS plan dated 12.10.2016 and produced by the Council and forming part of the Decision Notice to application reference S/1346/16/LD.
- 3.22 Increasing the number of caravans that can be stationed within the whole site from 1 to 2 is an intensification of the existing use. However, the applicant asserts that the intensification is not such that it would constitute a material change of use, and therefore would not fall into the definition of 'development' as described above.
- 3.23 As the proposal is not defined as 'development' a Lawful Development Certificate can be granted for the siting of two residential mobile homes on the land as identified on the Location Plan.

4. CONCLUSION

- 4.1. The applicant asserts that an increase in the number of caravans from 1 to 2 on the site would not represent a material change in the character of the land.
- 4.2. As there is no material change in the character of the land the proposal cannot represent a material change of use.
- 4.3. As the proposal does not represent a material change of use it cannot be defined as 'development'.
- 4.4. As the proposal is not defined as 'development', on this basis a Certificate of Lawful Use can be granted for the siting of two residential caravans on the land.
- 4.5. It is also clear that the whole site as identified in the Location Plan Ref: 21_1161A 001 is the planning unit.

5. APPENDICES

- A. Decision Notice and Location Plan for application reference S/1346/16/LD dated 12th October 2016
- B. Court of Appeal Judgement - Hertfordshire County Council v Secretary of State for Communities and Local Government and Metal Waste Recycling Limited [2012] EWCA Civ 1473
- C. Court of Appeal Judgement - Reed v The Secretary of State for Communities and Local Government [2014] EWCA Civ 241
- D. Planning Inspectorate Appeal Decision reference APP/Q3630/C/15/3018538 dated 13 January 2017